

LFC Requester:

AGENCY BILL ANALYSIS
2016 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ☐ Amendment ☒

Correction ☐ Substitute ☐

Date 02/16/2016

Bill No: HB 56

Sponsor: Paul Pacheco

Agency Code: 305

Short

Person Writing Jason Yamato

Title: Three Strikes Law

Phone: 505.222.9163 Email jyamato@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE**BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

The Public Affairs Committee recommends an amendment to HB 56 wherein on page 2 line 9 after the period the following is added: "The sentence of life imprisonment shall not be imposed without a finding that all three violent felonies:

1. resulted in great bodily harm;
2. were committed with intent to cause death or great bodily harm; and
3. were committed in a manner found to be violent."

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

N/A

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This is an amendment to HB 56. HB 37 is a partial duplicate.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

The three required findings would completely undermine the intent of HB 56 with regard to several of the proposed, additional crimes. For second degree murder, Section 30-2-1 requires a killing where the killer acts in a way where “he knows that such acts create a strong possibility of death or great bodily harm.” This requirement is different than the standard required by the proposed amendment and would potentially remove second degree murder as a predicate strike. The same can be said for both manslaughter and involuntary manslaughter. Pursuant to Section 30-3-3, a predicate felony for assault with intent to commit a violent felony is any one of “murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery or burglary.” It does not require a finding of actual death or great bodily harm. Necessarily this crime could not be used as a predicate strike. Aggravated battery with a deadly weapon does not require a showing of great bodily harm. Accordingly, this crime could not be used as a predicate strike. Shooting at an occupied dwelling does not require an intent to cause death or great bodily harm. The third degree form of this crime does not require a showing of great bodily harm which creates a possibility that this crime may not be used to enhance a sentence pursuant to HB 56. Third degree shooting at or from a motor vehicle does require a showing of great bodily harm. It does not require an intent to cause death or great bodily harm but, rather, a “reckless disregard.” This, again, raises the possibility of it not being used to enhance pursuant to HB 56. Third degree aggravated battery requires only an intent to injure. It does not require an intent to cause death or great bodily harm. This seems to exclude that crime from being used as a predicate strike. Armed robbery not resulting in great bodily harm clearly does not require a showing of great bodily harm. This necessarily removes it from being a predicate strike. CSP in the first degree does not require an intent to cause great bodily harm. It may not require any showing of great bodily harm. This makes it extremely likely that no degree of CSP can be used as a predicate strike. Second or third degree CSC of a minor does not require a showing of great bodily harm nor does it require intent to commit death or great bodily harm. This necessarily means that no degree of CSC may be used as a predicate strike. Aggravated burglary does not required a showing of great bodily harm and certainly does not require an intent to cause great bodily harm. This would remove that crime from the list of predicate strikes. Aggravated arson requires a showing of great bodily harm. It does not require a showing that the arson was committed with the intent to cause great bodily harm. This would jeopardize that crime from being used as a predicate strike. Aggravated assault against a peace officer necessarily means no great bodily harm occurred. This would remove that crime from the list of predicate strikes. The same can be said about assault to commit a violent felony upon a peace officer. Third degree aggravated battery on a peace officer does not require a showing of great bodily harm. Accordingly, that crime cannot be a predicate strike. Second degree aggravated battery upon a peace officer does require a showing of great bodily harm, but only requires an “intent to injure.” This removes second degree aggravated battery from the list of predicates as well. The child abuse charges do not require intent to cause death or great bodily harm. This removes those crime from the list of predicate strikes.

Another issue with the proposed amendment is that it would appear to require an evidentiary hearing for the predicate strikes being used to enhance the sentence. This would be increasingly difficult with the passage of time. The findings required would make it nearly impossible to enhance a sentence pursuant to HB 56.

The proposed amendment would seem to undermine the purpose behind HB 56. Not only does it render most, if not all, of the newly proposed crimes to the list of strikes useless to enhance, it calls into question whether some of the currently included charges can be used as well. This would seem to be contrary to the drafter’s purpose. It also weakens the existing law.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A